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ABSTRACT

Presented here are the remarks of William Bradford Reynolds, Assistant Attorney General, Civil Rights Division at the Education Commission of the States National Project on Desegregation Strategies' Workshop. Reynolds states that mandatory busing and other remedial techniques to achieve racial balance in schools (measures tentatively sanctioned by the United States Supreme Court after the Swann decision of 1971) have not fared well. The speaker says that the Department of Justice will now emphasize a remedy that will remove State enforced barriers to open up access to public schools: to ensure that all students are provided with educational opportunities of comparable quality; and to provide individual relief to students injured by unconstitutional state actions. Reynolds cites the overseeing of the development of a desegregation plan in Chicago, Illinois in which the Justice Department is emphasizing voluntary desegregation techniques. (APM)

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REMARKS

OF

THE HONORABLE WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

AT THE

EDUCATION COMMISSION OF THE STATES
NATIONAL PROJECT ON DESEGREGATION STRATEGIES' WORKSHOP

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EDUCATION COMMISSION OF THE STATES SPEECH

Mr. Johnson, Mr. Williams, distinguished members of the Commission, ladies and gentlemen, I am pleased to be afforded this opportunity to discuss with you the crucial issues relating to the theme of this workshop; "Equal Educational Opportunity Strategies for Today's Realities." I think it fitting that my first public remarks on the subject of equal educational opportunity be addressed to the Education Commission of the States, for few organizations have contributed as much toward realization of the national goal of equal, and quality, education for all.

I believe there is no higher or more important calling than the field of education, for to our teachers we entrust the heavy responsibility of developing America's most precious resource -- the minds of our youth. Only if the limits of Man's knowledge and understanding are broadened, and the lessons of history learned, will tomorrow's leaders be prepared to detect and correct our errors, in the manner that we gathered here today strive to profit from the mistakes of our forebears.

On another level, the privilege of education is basic to the full exercise of fundamental constitutional rights. For example, the precious first amendment right to trade in the "marketplace of ideas" undeniably has less value to those who are not less educationally equipped to engage fully in the exchange. Similarly, all would concede the importance of education to

informed participation in the affairs of government through the right to vote.

It is thus with a full understanding of the critical role of education in the development of our youth, and therefore in the progress of our country, that the Civil Rights Division of the Justice Department approaches its obligations to enforce the equal educational opportunity guaranties of the Constitution and laws of the United States.

I have been asked to focus my remarks today on the question of school desegregation and the Justice Department's policies in this vital area of the law. Before turning to the particulars of our desegregation policies, however, let me first put my topic in its proper historical perspective.

"The life of the law," said Oliver Wendell Holmes, "has not been logic, it has been experience." _/ It was in obedience to this truth, that the United States Supreme Court, in Brown v. Board of Education, 347 U.S. 483 (1954), looked back over 84 years of experience under the shameful "separate but equal" regime established in Plessy v. Ferguson, 163 U.S. 537 (1896), and concluded that separate education facilities are inherently unequal and thus inconsistent with the constitutional guaranty of equal protection of the laws.

The following year, in 1955, the Supreme Court ordered that the Nation's dual school systems be dismantled "with all deliberate speed." Brown v. Board of Education, 349 U.S. 294, 300-301 (1955). The Court declared that the goal of a desegregation remedy is the admission of students to public schools on a "racially nondiscriminatory basis." Id.

During the period following Brown, resistance to the Court's decree was widespread, and few jurisdictions made substantial progress towards desegregation. In 1968, thirteen years after the Brown decision, the Supreme Court's patience expired. In Green v. County School Board, 391 U.S. 430 (1968), the Court made clear that school officials were required to come forth with desegregation plans that, and I quote, "promise realistically to work, and promise realistically to work now." Id. at ____.

At the time of the Green decision, the Supreme Court had never mentioned racial balance in the classroom as a goal of a segregation decree, nor had it asserted that racial balance would remedy individual injuries that flow from state-enforced segregation in public schools. Rather, the goal of a desegregation plan was still simply to ensure a racially neutral system of student assignments. In 1971, however, the Supreme Court held in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), that desegregation decrees may order race-conscious student assignment schemes that employ mandatory busing, alteration

of attendance zones, and other methods to obtain racial balance in schools. Without explication, the Court lent tentative sanction to the remedial goal of racial balance in school assignments, in contrast to the goal of racial neutrality. The Swann decision concluded that desegregation decrees not only should ensure genuine race neutrality in student assignments, but also should rectify any racial imbalance attributable to past de jure, or state-enforced, segregation, even in the absence of a particularized injury to an individual student traceable to the unconstitutional state action. The Court in Swann emphasized the multiple competing public and private interests that should inform a desegregation decree, frowned on compulsory busing that significantly impinges on the educational process, and tacitly urged courts to rely on experience in exercising equitable remedial power.

Today, a decade after Swann's cautious sanction of mandatory busing and companion devices employed to achieve racial balance in schools, the courts, educators, and the public must assess the efficacy of particular remedial techniques against the same standard under which the law of public education has evolved since the dark days of "separate but equal" facilities; that is, against the test of experience.

Judged against the test of time, it is clear that our experiment with mandatory busing, as a remedy for de jure segregation has not fared well. Few issues have generated as much public tumult and anguish as court-ordered busing, and there is compelling evidence that mandatory transportation

of students has failed to accomplish the remedial goal that Brown and Swann anticipated, namely, an educational environment that would provide an equal opportunity for every school child, irrespective of race, to realize his or her achievement potential in accordance with individual industry and talent. In his May address to the American Law Institute, Attorney General William French Smith commented:

"The results of studies aimed at determining the benefits of busing to educational achievement are at best mixed. Some studies have found negative effects on achievement. Other studies indicate that busing does not have positive effects on achievement and that other considerations are more likely to produce significant positive influences.

In addition, in many communities where courts have implemented busing plans, resegregation has occurred. In some instances upwardly mobile whites and blacks have merely chosen to leave the urban environment. In other instances, a concern for the quality of the schools their children attend has caused parents to move beyond the reach of busing orders. Other parents have chosen to enroll their children in private schools

that they consider better able to provide a quality education. The desertion of our cities' school system has sometimes eliminated any chance of achieving racial balance even if intra-city busing were ordered."

Nor have the lessons of experience been lost on some judges. Noting that a desegregation plan with objectionable transportation requirements and judicial oversight typically accelerates the exodus to the suburbs of families able to move, Justice Lewis Powell of the United States Supreme Court recently remarked:

This pursuit of racial balance at any cost. . . is without constitutional or social justification. Out of zeal to remedy one evil, courts may encourage or set the stage for other evils. By acting against one race schools, courts may produce one race systems. __/

___/ Estes v. Metropolitan Branches of the Dallas NAACP,
U.S. ___, 100 Supreme Court 716 (1980).

The flight from urban public schools has eroded the tax base of many cities, which has in turn contributed to the growing inability of many school systems to provide high-quality education to their students--whether black or white. Similarly, the loss of parental support and involvement has robbed many public school systems of a critical component of successful educational programs. When one adds to these realities the growing empirical evidence that racially balanced public schools have failed to improve the educational achievement of their students, the case for mandatory busing collapses.

In formulating policies in the area of public school desegregation, the Administration cannot close its eyes to the experience of the past decade. Nor can it ignore the fundamental American ideal that all government action ought to be color-blind. As Attorney General Smith said in his May address:

[I]n a just society, government must not require either racial balance or racial separation -- and government must not guarantee any individual a result based upon his or her race.

In keeping with this overarching philosophy, the Justice Department will, in school cases as in all other cases handled by the Civil Rights Division, refrain from seeking race-conscious remedies, such as court-ordered busing, solely for the purpose of achieving a particular racial balance. Rather, the Department will, on a finding by a court of de jure segregation of the public schools, emphasize a remedy that includes the following three components: (i) removal of all state-enforced barriers to open access to public schools, (ii) insurance that all students -- white and black -- are provided equal opportunities to obtain an education of comparable quality, and (iii) appropriate individual relief to any student who has actually been injured by unconstitutional state action.

The failure of court-ordered busing to achieve the goal of equal educational opportunity points to the need for those in the fields of government and education to seek innovative and practical approaches to solve this vexing problem.

The Department of Justice is currently working to develop such new approaches. No single factor provides the answer; nor does a particular combination of factors offer the perfect remedial formula for all cases. But some elements of a desegregation plan that seem to hold promise for success include: voluntary student transfer programs; magnet schools; enhanced curriculum requirements;

faculty incentives; school closings in systems with excess capacity and new construction in systems that are over-crowded; adjustments to district lines; and perhaps alteration of existing feeder patterns. The watchword in selecting any or all of the above remedial techniques -- or indeed resorting to others that may be developed -- is equal educational opportunity. We must ensure, whatever the ultimate racial composition in the classroom, that all students attending public schools, regardless of race, color, or ethnic background, have an equal opportunity to receive an education. We are concerned, quite simply, not with student relocation, but with student education; and our school desegregation plans will be drawn to reflect that concern.

Pursuant to the Department's civil rights policies, we are overseeing the development of a desegregation plan right here in Chicago that will be designed to enhance educational opportunities for all students. The public school enrollment in Chicago is approximately 61% black, 18% white, and 21% non-black minorities, mostly Hispanic. The Consent Decree entered into by the Chicago School Board and the Justice Department recognizes that there are schools in the system which will remain racially identifiable under the desegregation plan, and the Consent Decree requires the Board to provide compensatory programs to enhance the quality

of education provided in those schools in order to guarantee equal educational opportunity to all students in the system. To this end, the Board has developed and submitted to the Court, with our enthusiastic approval, detailed plans to enhance educational quality in the schools, and implementation of those plans began this fall.

With respect to student reassignment, the Chicago School Board has adopted a set of principles to guide the planning process. The first principle is to achieve desegregation through voluntary techniques such as voluntary transfers and magnet schools. At the same time the Board is committed to making attendance area adjustments in a manner that do not involve busing. The Board's planning principles reserve the use of mandatory student transportation until after other techniques have been used this year and next and have been determined to have failed. And then mandatory transportation is contemplated only to the extent it would be practicable in meeting the basic requirements of the planning principles and the Consent Decree.

Similarly, in the area of higher education...

[describe North Carolina decree]

By concentrating our attention and resources on teachers, course offerings, incentives for learning, and other components of education quality, this Administration, with the help and cooperation of civil rights groups, state and local school authorities, and, most importantly, professional educators, can formulate desegregation plans that not only will ensure all public school students, irrespective of race, equal educational opportunity, but will rectify any injury suffered by an individual student as a consequence of intentional segregation. If such a cooperative and united effort can be mounted to rid our Nation's public schools of the tragic legacy of racial discrimination, I am confident that, in time, we will be able to review that effort against the test of experience, and say with pride "it worked."